

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

7 BONNIE STEARNS-
8 GROSECLOSE,

9 Plaintiff,

10 v.

11 CHELAN COUNTY SHERIFF'S
12 DEPARTMENT, a division of
13 Chelan County, MIKE HARUM,
individually, GREG MEINZER,
individually and KENT SISSON,
individually,

14 Defendants.
15

NO. CV-04-0312-RHW

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

16 A bench trial was held in Spokane, Washington from February 6, 2006, to
17 February 9, 2006. Plaintiff was represented by Scott Kane and Carol Tippi Volyn.
18 Defendants were represented by Stanley Bastian. These findings constitute the
19 Court's final findings of fact and conclusions of law as required by Federal Rule of
20 Civil Procedure 52(a).

21 **PROCEDURAL HISTORY**

22 Plaintiff originally filed suit in Chelan County Superior Court. Defendant
23 City of Chelan removed the case to federal court on August 20, 2004. Jurisdiction
24 is proper under 28 U.S.C. § 1331, because Plaintiff has stated a claim under 42
25 U.S.C. § 1983. All parties filed motions for summary judgment in October 2005.
26 By order on January 17, 2006, the Court granted the City of Chelan's summary
27 judgment motion and dismissed it as a party. The same order granted, in part, and
28 denied, in part, the summary judgment motion filed by the Chelan County Sheriff's

Office (“CCSO”) and the individual Defendants, finding a genuine issue of material fact existed as to several of Plaintiff’s claims. The Court denied Plaintiff’s motion for summary judgment and her subsequent motion to reconsider.

FACTS

Plaintiff was employed as a police officer for the City of Chelan from August 16, 1999, to February 29, 2004. On December 15, 2003, the City and CCSO entered into a Law Enforcement Service Agreement (“LESA”) in which CCSO agreed to provide law enforcement services within the City of Chelan.

The LESA includes several provisions material to this suit regarding the transfer of authority and personnel from the City to CCSO. The relevant provisions are as follows:

2.4 [Law Enforcement Services] shall include a minimum of five (5) deputies and one (1) sergeant assigned and scheduled to the City of Chelan. Said personnel will provide 24 hour patrol within the city 7 days a week.

ARTICLE IV

4.1 Personnel:

4.2 The rendition of such services, the standards of performance, the discipline of officers, and other matters incident to the performance of such services and the control of personnel so employed shall remain in the County.

4.3 Pursuant to RCW 41.14.250, and as a direct consequence of this agreement, city law enforcement employees who have met the minimum standards and qualifications of the Sheriff’s office, and successfully completed a background investigation, may transfer employment to the county. All persons employed in the performance of such services and functions pursuant to this Agreement for said City shall be County employees and no City employee shall transfer employment to the County, unless required pursuant to RCW 41.14.250.

(Ex. 18). Pursuant to the LESA, on February 29, 2004, the City closed its Police Department and laid off all city law enforcement employees. On March 1, 2004, CCSO assumed all law enforcement services.

Plaintiff, along with most of the other City of Chelan police officers, sought to transfer her employment to CCSO before the dissolution of the Chelan Police Department. Sections 41.14.250 to 41.14.270 of the Revised Code of Washington govern the transfer of police department employees when a city contracts to obtain

1 sheriff's office law enforcement services. An employee applying for transfer
 2 qualifies under these state laws only if she meets the minimum standards and
 3 qualifications of the sheriff's office. RCW § 41.14.250. Rule 21 of the Chelan
 4 County Civil Service Commission Rules contains the minimum standards and
 5 qualifications for employment as a Chelan County Sheriff's Deputy. Rule 21
 6 states, in part, the following:

7 **MINIMUM JOB REQUIREMENTS . . .**

- 8 1. Graduation from standard high school, or GED, **PLUS**
- 9 2. Ability to read and write the English language.
- 10 3. United States Citizen, good physical condition, and not less than
 11 21 years of age at the time of employment.
- 12 4. Possession of a valid Washington State driver's license by date of
 13 hire.
- 14 5. Ability to pass entrance examination successfully. Must meet
 15 minimum medical and health standards adopted by the Civil
 16 Service Commission.
- 17 6. Applicant must have no felony convictions; *be able to successfully*
 18 *pass a background investigation*; and be able to obtain a
 19 concealed weapons permit.
- 20 7. Once employed the applicant must successfully complete the
 21 Basic Law Enforcement Academy and successfully pass the Basic
 22 Law Enforcement physical agility admittance test.
- 23 8. Once employed the applicant must meet all required certifications
 24 and maintain all other standards necessary for the performance of
 25 their job duties.

26 (Ex. 36) (emphasis added).

27 The term "background investigation" is not defined or further elaborated in
 28 the rules, but Exhibit 22 describes some background investigation guidelines
 available to CCSO detectives. The guidelines state that the officer conducting the
 investigation should obtain references from the applicant's current and past
 employers and inquire of the applicant's family, friends, and associates as to her
 character and reputation. (Ex. 22, at 1-2). The stated objectives of the
 investigation are to allow the Sheriff and Undersheriff "to form a view of the
 applicant's qualifications, experience, honesty, dependability, integrity, morality,
 emotional stability, reputation, associations, prejudice and loyalty[;]" and to ensure
 the applicant has "good moral character." (Id.). Good moral character is defined
 as follows:

1 A prospective employee of good moral character would possess
2 attributes to enhance his or her job performance, including honesty,
3 integrity, obedience to the oath of office and the code of ethics, respect
4 for authority and respect for the rights of others. Good moral character
is determined by a favorable report following the comprehensive
background investigation.

(Id.).

5 Detective Mike Hartnett conducted a background investigation on Plaintiff
6 after she applied to CCSO. Det. Hartnett's report includes a comparison of
7 Plaintiff's applications to CCSO (she applied initially in March 1999 and again in
8 December 2004) and an evaluation of her personnel file with the City Police
9 Department. The report summarizes Det. Hartnett's interviews with most of
10 Plaintiff's co-workers and supervisors and one private citizen. Det. Hartnett
11 explained that he focused his interviews on her co-workers at the City because he
12 believed their opinions of her abilities and working relationships were most
13 relevant to her potential performance as a field deputy at CCSO. The report also
14 includes the results of a polygraph test and Det. Hartnett's own evaluation of
15 Plaintiff's fitness to be employed by CCSO. (Ex. 1).

16 The interview summaries in the background investigation report indicate that
17 several of Plaintiff's co-workers thought she was weak at her patrol duties and
18 officer safety, although quite a few stated that this may be due to lack of
19 supervision and training. A few officers reported inappropriate incidents such as
20 public intoxication and calling officers to serve as a "taxi service" for Plaintiff's
21 intoxicated friends. Plaintiff's direct supervisor, Lt. Rhines, was asked for an
22 interview but did not acknowledge or respond to Det. Hartnett's request to meet.
23 Det. Hartnett's report of Chief Ed Bush's interview is the most negative among all
24 the interview summaries. Chief Bush reportedly stated that Plaintiff "should be
25 fired and not hired by [CCSO]." (Id.).

26 Plaintiff received several compliments during Det. Hartnett's interviews as
27 well—Chelan Police Officer Joseph Waldon said she responds well to medical
28 emergencies and has good contacts with the public; CCSO Deputy Doug Corulli

1 stated she has “good follow-up” and does well with detective work; and CCSO
2 Deputy Bob Mckellar said he enjoys working with Plaintiff, she is thorough in her
3 investigation techniques, and she is knowledgeable in the area of search warrants
4 and check fraud cases. These positive comments were included in the background
5 investigation report. (Ex. 1, at 4-6). Deputy Mckellar’s interview was the only one
6 that did not include any negative comments, however.

7 Aside from interview summaries, the report details other aspects of
8 Plaintiff’s career at the Chelan Police Department. Det. Hartnett reported that
9 Plaintiff had used a City police car and her uniform without permission in a
10 photograph she posted on an internet dating service in 2002. His review of
11 Plaintiff’s personnel file notes that her evaluations were “unremarkable with
12 positive notations regarding her investigations of child abuse.” The report
13 considers her medical condition, stating that she received treatment for “acute
14 stress disorder” in 2003 after a former colleague was killed on duty, but was
15 released as “‘fully recovered’ with no restrictions as a police officer.” (Id.). The
16 report also mentions that Plaintiff has “other medical problems that are brought
17 under control with medications and again offer no restrictions to her abilities as a
18 police officer.” (Id.).

19 Det. Hartnett’s report goes into greater detail describing a disciplinary letter
20 written by Corporal Saul Gallegos in 2002 that outlines deficiencies in Plaintiff’s
21 work habits and recommends corrective action. This letter is attached to the
22 background investigation report. Deficiencies mentioned in the Gallegos letter
23 include sleeping on duty, becoming intoxicated off-duty at local bars, and a general
24 failure to be proactive on duty. Mr. Gallegos is now deceased, and no corrective
25 action was recorded in Plaintiff’s file. (Id.). An addendum to the report includes
26 information and documents discovered after the initial report was complete. The
27 addendum is comprised of an official citizen’s complaint regarding Plaintiff and a
28 response memorandum written by a reserve deputy who describes some

1 “questionable” behaviors on the part of Plaintiff. (Ex. 37).

2 The overall impression from the background report, as reflected in Det.
3 Hartnett’s evaluation at its end, is negative. Det. Hartnett recognized that most of
4 the incidents complained of occurred during 2002, and he was unaware whether
5 her behavior had changed since then. Det. Hartnett wrote:

6 Based upon the overwhelming negative input from her co-workers and
7 other references (with one exception) I would recommend that if
8 [Plaintiff] is considered for employment with this office she be enrolled
9 in an intensive FTO [Field Training Officer] program . . . to include
remedial training for basic police officer skills. It should be noted that
I did not respond to rumors, rather I only included first hand knowledge
of Bonnie’s behavior, conduct, and abilities.

10 (Ex. 1, at 8).

11 After reviewing Det. Hartnett’s report, Sheriff Mike Harum, the appointing
12 authority for CCSO, determined Plaintiff did not pass the background investigation
13 and would not be offered a position. Undersheriff Greg Meinzer informed her of
14 this decision by letter dated January 16, 2004. (Ex. 31). Plaintiff received the
15 letter on or about January 18, 2004, and a copy of the letter was delivered to the
16 Chelan County Civil Service Commission. (Id.).

17 Plaintiff presented testimony from Det. Hartnett and Eric Collier, another
18 detective with CCSO, indicating that Mark Mann, the then-Chief Criminal Deputy
19 with CCSO, made comments on at least two occasions implying that Ms. Stearns-
20 Groseclose would not be hired by CCSO when the transfer of services occurred.
21 During trial Mr. Mann did not recall making these statements. Det. Hartnett
22 testified that Mr. Mann’s statements did not influence his compilation of the
23 background investigation report, and that he did not have the impression that Mr.
24 Mann was speaking in his official capacity or for Sheriff Harum. Det. Collier
25 testified that Mr. Mann said Plaintiff would not be hired because she failed her
26 background investigation, even though the investigation had not yet been
27 completed. Collier had the impression that Mr. Mann made his statements with
28 authority and conviction, as though it was a fact that Plaintiff would not be hired at

1 CCSO. Mr. Mann was not involved in the decision whether to hire Plaintiff as a
2 CCSO deputy, and he in fact, left his position there in late December 2003, before
3 the background investigation was completed.

4 Plaintiff did not respond to the allegations contained in the background
5 investigation report. However, the Civil Service Commission Rules for CCSO
6 include a procedure for an applicant to appeal a decision that she failed a
7 background investigation. Rule 10.07 states that the name of any person on an
8 “eligibility list”—a list of the top candidates for a position, whether they are entry
9 level, lateral hires, or bilingual candidates—may be removed from the list if,
10 among other disqualifications, she “fails to successfully pass a background
11 investigation.” (Ex. 110, Rule 10.07). According to Rule 11.05, a person who has
12 been removed from the eligibility list may be restored to her original position on
13 the list by the Civil Service Commission or the secretary-chief examiner “on
14 successful appeal by the appellant taken within ten business days after notice of the
15 decision[.]” (Id., Rule 11.05). None of the Civil Service Rules directly addresses
16 or imposes special conditions on the procedure for transferring employees when a
17 city police department is absorbed by CCSO.

18 On March 3, 2004, an article appeared in the *Wenatchee World* in which it
19 was reported that

20 The Chelan County Sheriff’s Office officially took over police
21 duties this week for the city of Chelan, ending a nearly 50-year span of
city-run law enforcement.

22 The county hired four former Chelan police officers, assigning
them to patrol the city.

23 Two other Chelan police officers failed background checks
24 required for employment, said sheriff’s office Sgt. Kent Sisson, who is
in charge of the new Chelan detachment. Sisson would not say why the
two officers, Kyle Watson and Bonnie Stearns, were not hired, other than
to say that they did not meet the standards set by the sheriff’s office.

25 Stearns said Tuesday that she has hired an attorney and plans to
26 appeal the decision. She said the sheriff’s office has not yet fully
explained why she was not hired.

27 Sisson said Watson has not appealed the decision and plans to
28 seek law enforcement employment elsewhere. Watson couldn’t be
reached for comment.

(Ex. 100).

1 Plaintiff also introduced testimony and evidence regarding Sheriff Harum's
2 hiring practices as they relate to other women who have applied for a field deputy
3 position with CCSO. Sheriff Harum has not hired any women as field deputies
4 during his tenure as the appointing authority. Plaintiff presented circumstantial
5 evidence that could indicate this dearth of female field deputies was the result of
6 inappropriate hiring practices. However, Sheriff Harum also testified that, during
7 his tenure, there were only four female applicants for field deputy positions and
8 "99 percent of applicants are men."

9 CONCLUSIONS

10 Plaintiff is alleging four separate claims against Sheriff Harum, Undersheriff
11 Meinzer, Sgt. Kent Sisson, and CCSO. She claims Sheriff Harum violated 42
12 U.S.C. § 1983 by denying her due process rights when he decided she failed her
13 background investigation. Plaintiff also claims that Defendants violated RCW §§
14 41.14.250-41.14.270 by failing to transfer her from the City Police Department to
15 CCSO. Her third claim for relief is that Defendants defamed her reputation
16 through their comments in the article in the *Wenatchee World*. Lastly, Plaintiff
17 alleges Defendants discriminated against her on the basis of gender in refusing to
18 hire her.

19 **I. Plaintiff's Due Process Claim under 42 U.S.C. § 1983**

20 Plaintiff claims Sheriff Harum violated her due process rights under the Fifth
21 and Fourteenth Amendments and is liable for damages.¹ Plaintiff raises
22 constitutional claims under 42 U.S.C. § 1983 and *Cleveland Board of Education v.*
23 *Loudermill*, 470 U.S. 532, 538 (1985). To establish liability under § 1983,

24 ¹ Plaintiff's constitutional claim originally named the City of Chelan, CCSO
25 and the other individual Defendants in addition to Sheriff Harum. However, the
26 Court by order dismissed her § 1983 claims against the other Defendants, finding
27 that the individual Defendants were protected by qualified immunity and the City
28 of Chelan and CCSO were not liable as municipal entities. (Ct. Rec. 133).

1 Plaintiff bears the burden of proving that Sheriff Harum: (1) acted under color of
 2 state law, and (2) deprived Plaintiff of rights secured by the Constitution or federal
 3 statutes.² 42 U.S.C. § 1983; *Martinez v. City of Oxnard*, 270 F.3d 852, 855 (9th
 4 Cir. 2001). Here, Sheriff Harum was acting under color of state law when he
 5 decided Plaintiff did not pass her background investigation, so she has established
 6 the first element of her § 1983 claim. Regarding the second element, Plaintiff
 7 alleges Sheriff Harum violated her due process rights by depriving her of both
 8 liberty and property interests without according her due process.

9 “A state cannot deprive a person of property without according her due
 10 process. U.S. Const. amend. XIV. A property entitlement, such as that of
 11 continued employment in a state job, is grounded in state law.” *Rea v. Matteucci*,
 12 121 F.3d 483, 484 (9th Cir. 1997) (citing *Logan v. Zimmerman Brush Co.*, 455
 13 U.S. 422, 430 (1982)). In *Stone v. Chelan County Sheriff’s Department*, the
 14 Washington Supreme Court considered RCW §§ 41.14.250-41.14.270 and the
 15 rights those provisions give to employees seeking transfer to a county sheriff’s
 16 office.³ The court found that

17
 18 ² Section 1983 states in relevant part the following:

19 Every person who, under color of any statute, ordinance, regulation,
 20 custom, or usage, of any State or Territory . . . subjects, or causes to be
 21 subjected, any citizen of the United States or other person within the
 22 jurisdiction thereof to the deprivation of any rights, privileges, or
 immunities secured by the Constitution and laws, shall be liable to the
 party injured in an action at law, suit in equity, or other proper
 proceeding for redress[.]

23 42 U.S.C. § 1983.

24 ³ The provisions relevant to this matter state the following:

25 **41.14.250. City contracts to obtain sheriff’s office law enforcement
 26 services—Transfer of police department employees**

27 When any city or town shall contract with the county sheriff’s
 28 office to obtain law enforcement services to the city or town, any
 employee of the police department of such city or town who (1) was at
 the time such contract was entered into employed exclusively or
 principally in performing the powers, duties, and functions which are to
 be performed by the county sheriff’s office under such contract (2) will,

[t]he plain language of these statutes indicates city law enforcement employees do not have an unconditional right to transfer their employment, but must first meet the County's minimum employment standards and qualifications. The County therefore has the right to . . . refuse employment to those who may have met the City's standards, but do not meet the County's. To interpret the transfer statutes otherwise would render the third eligibility requirement in RCW 41.14.250 meaningless.

Id. at 810. Because those seeking transfer do not have an "absolute right to employment with the County," the court held that they are applying for employment and must meet any required employee qualifications. *Id.* at 811. Employees who are *eligible* to transfer under RCW § 41.14.250, *i.e.*, those who are employed by the city, will be terminated as a result of the contract, and meet the minimum standards and qualifications of the county sheriff's office, have a property right in their continued employment. *See* RCW § 41.14.260 (stating that "[a]n eligible employee may transfer . . . by filing a written request. . . . Upon receipt of such request by the civil service commission the transfer of employment shall be made."). Conversely, those employees who do not meet the minimum standards and qualifications of employment do not have a property right to continued employment.

Plaintiff did not meet the minimum standards and qualifications to become a

as a direct consequence of such contract, be separated from the employ of the city or town, and (3) meets the minimum standards and qualifications of the county sheriff's office, then such employee may transfer his employment to the county sheriff's office as provided for in RCW 41.14.260 and 41.14.270.

41.14.260. City contracts to obtain sheriff's office law enforcement services—Transfer of police department employees into county civil service for sheriff's office—Seniority for employment

(1) An eligible employee may transfer into the county civil service system for the sheriff's office by filing a written request with the county civil service commission and by giving written notice thereof to the legislative authority of the city or town. Upon receipt of such request by the civil service commission the transfer of employment shall be made. . . . The sheriff may appoint the transferring employee to whatever duties he feels are in the best interest of the department and the individual.

RCW §§ 41.14.250 & 41.14.260.

CCSO field deputy due to Sheriff Harum's decision that she did not pass her background investigation. Therefore, under state law, she did not have a property interest in continued employment. However, Plaintiff charges that Sheriff Harum deprived her of due process by failing to give her an opportunity to challenge his decision. Although it may be possible to end the inquiry into Plaintiff's due process rights here, the Court is hesitant to do so because of the mandatory nature of the statutes governing transfer of state employees and the subjective nature of the decision whether an applicant passes or fails a background investigation. It is necessary to examine the process available to challenge the accuracy of Sheriff Harum's decision because this ultimately deprived Plaintiff of her protected property interest in continued employment. However, Plaintiff's claim is still distinguishable from that raised in *Loudermill* and its progeny: In *Loudermill*, the U.S. Supreme Court held that public employees with tenure were entitled to a pre-termination hearing. 470 U.S. at 538. Here, Plaintiff was not tenured or employed with CCSO; instead, CCSO decided not to hire Plaintiff. *See Stone*, 110 Wash.2d at 811 (holding that those applying to transfer to the county pursuant to RCW §§ 41.14.250-41.14.270 were "applying for employment"). Accordingly, Plaintiff was not necessarily entitled to a pre-termination hearing exactly as it is outlined in *Loudermill*, and the Court must determine "what process is due" considering the unique circumstances here. *Loudermill*, 470 U.S. at 541.

Plaintiff also claims Sheriff Harum violated the Due Process Clause by depriving her of liberty interests without due process. The Ninth Circuit has held:

injury to reputation standing alone does not violate the Due Process Clause of the Fourteenth Amendment; one's "interest in reputation" standing alone "is neither 'liberty' nor 'property' guaranteed against state deprivation without due process of law." Rather, due process protections apply only if a plaintiff is subjected to "'stigma plus'; i.e., if the state makes a charge against [a plaintiff] that might seriously damage his standing and associations in the community," and "1) the accuracy of the charge is contested, 2) there is some public disclosure of the charge, and 3) it is made in connection with the termination of employment or the alteration of some right or status recognized by state law."

1 *Wenger v. Monroe*, 282 F.3d 1068, 1074 (9th Cir. 2002) (as amended on denial of
2 rehearing and rehearing *en banc*) (internal citations omitted). As a law
3 enforcement officer, the charge that Plaintiff failed her background investigation
4 could seriously damage her standing and associations in the community. The other
5 factors required to meet a “stigma plus” burden are also met here: Plaintiff contests
6 the accuracy of the charge that she failed her background investigation; there was
7 public disclosure that she failed in the *Wenatchee World*, and the disclosure of her
8 failure of the background investigation was made in connection with the denial of
9 an otherwise statutorily-mandated transfer.

10 “An essential principle of due process is that a deprivation of life, liberty, or
11 property be preceded by notice and opportunity for hearing appropriate to the
12 nature of the case.” *Loudermill*, 470 U.S. at 542 (internal quotation and citation
13 omitted). In this case, Plaintiff received notice of Sheriff Harum’s decision by
14 letter on January 18, 2004. This notice included the reason for CCSO’s denial of
15 employment. *See* Ex. 31 (“Therefore, based on the results of the background
16 investigation, you will not be receiving an offer of employment from this
17 agency.”). According to the Civil Service Rules for CCSO, Plaintiff also had an
18 opportunity for a hearing within ten days after notice of the decision. *See* Ex. 110,
19 Rule 11.05. The question that remains is whether the process available and its
20 timing were constitutionally sufficient considering the nature of the deprivation.
21 *See Vanelli v. Reynolds School Dist. No. 7*, 667 F.2d 773, 778 (9th Cir. 1982).

22 To answer this question, the Court must balance the competing interests at
23 stake: the private interest that will be affected, the governmental interest in hiring
24 qualified employees, and the risk of an erroneous deprivation of that interest. *Id.* at
25 778-79; *see also Loudermill*, 470 U.S. at 542-43. In this case, Plaintiff has a
26 substantial interest in the transfer of employment, although it is not as great as that
27 of a tenured employee. *See Stone*, 110 Wash.2d at 811. CCSO has a more
28 significant interest in hiring only those applicants whom it deems qualified for the

1 position of field deputy. It appears the determinative factor is the risk of erroneous
2 deprivation inherent in the background investigation procedure.

3 The background investigation procedure followed here was constitutionally
4 adequate. Although Plaintiff argues that the report portrays her in an unfairly
5 negative light and that Det. Hartnett should have gone about the investigation in a
6 different manner, the investigation and report were thorough and did not contain
7 materially inaccurate information. The background investigation, like a pre-
8 termination hearing, provided “an initial check against mistaken
9 decisions—essentially, a determination of whether there are reasonable grounds to
10 believe that the charges against the employee are true and support the proposed
11 action.” *Loudermill*, 470 U.S. at 545-46. Additionally, the Civil Service Rules
12 offered a procedure and opportunity to respond to any contested allegations in a
13 background investigation report, thus further minimizing the risk of an erroneous
14 deprivation of Plaintiff’s rights.

15 After balancing the competing interests here, the Court concludes that
16 Plaintiff received sufficient process: (1) she received written notice through a letter
17 informing her that she failed her background investigation; and (2) she had the
18 opportunity to appeal Sheriff Harum’s decision to the Civil Service Commission or
19 the secretary-examiner, thereby receiving both an explanation of the employer’s
20 evidence and an opportunity to present her side of the story. Additionally, the
21 letter informing her that she would not be offered a position at CCSO included an
22 invitation to respond immediately and directly to Undersheriff Meinzer. (Ex. 31)
23 (“If you have any questions, please call me at . . .”). This process satisfies the
24 minimum due process requirements for a deprivation of Plaintiff’s property and
25 liberty interests.⁴

26
27
28 ⁴ The *Loudermill* Court concluded that, where a *tenured* employee has a
protected property interest in continued employment, he is “entitled to oral or

1 The Court declines to impose a requirement that all candidates who fail a
 2 background investigation must be informed explicitly of their right to appeal the
 3 decision and the applicable appeal period deadline, and instead finds the
 4 procedures outlined in the Civil Service Rules and their general availability to
 5 applicants adequate. *See Payne v. Mount*, 41 Wash.App. 627, 635 (1985) (holding
 6 that “[a]lthough express notification of an appeal period deadline may be the
 7 preferred procedure, it is not required”). Plaintiff argues that her notice should
 8 have included at least a citation to the appeal procedures available to her, citing
 9 *McConnell v. City of Seattle*, 44 Wash.App. 316, 324-25 (1986). However, in
 10 contrast to the claimant in *McConnell*, Plaintiff was an applicant for employment
 11 and not a tenured employee with CCSO. Although the notice provided did not cite
 12 to the civil service rule that contains the time limit for appeal, it did meet minimum
 13 due process requirements for a transfer applicant considering the competing
 14 interests. Sheriff Harum did not violate Plaintiff’s due process rights when he
 15 decided she did not pass the background investigation or when this fact was related
 16 to the *Wenatchee World*. Instead, Plaintiff failed to take advantage of the process
 17 that was available to her in order to challenge the validity of his decision.

18 **II. Plaintiff’s State Law Claims**

19 Plaintiff’s remaining state law claims all rest on the validity of Sheriff
 20 Harum’s decision that Plaintiff failed the background investigation. The
 21 background investigation report and its addendum are discrete documents. (Exs.1
 22 & 37). At the beginning of trial, the Court questioned Plaintiff’s counsel whether
 23 it was Plaintiff’s contention that Det. Hartnett conspired with Sheriff Harum to

24
 25 written notice of the charges against him, an explanation of the employer’s
 26 evidence, and an opportunity to present his side of the story.” 470 U.S. at 546. A
 27 claimant with a protected liberty interest is similarly entitled to a hearing at which
 28 he can refute the charges against him and publicly clear his name. *Bd. of Regents
 of State Colleges v. Roth*, 408 U.S. 564, 573, 573 n.12 (1972).

1 make sure the report issued was such that Plaintiff would have failed it. Counsel
2 replied that this was not Plaintiff's contention. Thus, the legitimacy of the report
3 itself is not in question. The Court also asked whether it was Plaintiff's contention
4 that Sheriff Harum, upon reading Plaintiff's background investigation report,
5 should have concluded that she passed the background test. He replied that this
6 was not necessarily Plaintiff's contention either.⁵ Rather, Plaintiff contended that
7 the report was negligently compiled and not followed up appropriately, and that
8 Sheriff Harum based his decision, at least partially, on gender bias.

9 As explained above, the overall tone of the report was overwhelmingly
10 negative. Plaintiff's personnel files were "unremarkable," but the interviews with
11 her co-workers were generally negative in tone, particularly the interview with
12 Chief Bush, who was Plaintiff's boss. There were also several reports of
13 questionable behavior for a law enforcement officer that would cause a reasonable
14 sheriff concern over a potential employee's performance. Going through the
15 report, several negative reports and characteristics stand out: (1) Cpl. Gallegos'
16 letter to Chief Bush describes quite a few bad work habits and other issues,
17 including public intoxication; (2) Plaintiff's supervisor remarked in her personnel
18 file that she "has had some activities that have brought into question her personal
19 judgment as an officer"; (3) co-worker interviews were overwhelmingly negative,
20 indicating poor working relationships and officer safety concerns; and (4) co-
21 worker interviews, Plaintiff's polygraph, and the citizen complaint describe several
22 incidents in which Plaintiff exercised poor judgment as a law enforcement officer.

23 Plaintiff disputes many of the allegations and contentions in the background
24 investigation report, but there was no contemporaneous evidence from which
25 Sheriff Harum could conclude that the report was unreliable. Despite Plaintiff's
26 assertions to the contrary, the polygraph reports are not inconsistent with the
27 allegations contained in the background investigation report. It would be

28 ⁵ Plaintiff's counsel retracted this statement later in the proceedings.

1 inappropriate for this Court to consider information not available to Sheriff Harum
2 when assessing the propriety of his decision at the time it was made. Plaintiff also
3 appears to argue that the review of background investigations of applicants to
4 transfer pursuant to statute, like Plaintiff, should differ qualitatively from the
5 review of background investigations of “normal” applicants. She contends only
6 incidents and actions that would be terminable should disqualify a transfer or
7 absorption applicant from passing her background investigation. There is no
8 indication in state laws or regulations that a different standard of review should
9 apply. Furthermore, the fact that incidents and complaints had been addressed by
10 Plaintiff’s former employer does not necessarily mean they should not be
11 considered by a potential future employer. An incident may not rise to a level
12 requiring termination, but may raise sufficient concerns to justify a decision not to
13 extend an offer of employment. Therefore, for the purposes of this matter, the
14 Court finds that a reasonable person reading the background investigation report
15 could conclude that Plaintiff failed the background check, or, in other words, that
16 she did not have the qualifications and “good moral character” required to become
17 a CCSO field deputy.

18 **A. Violations of RCW §§ 41.14.250-41.14.270**

19 Sections 41.14.250 to 41.14.270 govern the transfer of employees from city
20 police departments to county sheriff’s offices when a city contracts with a county
21 to provide law enforcement services. As stated above, the Washington Supreme
22 Court considered these provisions in *Stone v. Chelan County Sheriff’s Department*,
23 110 Wash.2d 806. As stated in the LESA and in the Civil Service Rules, passing
24 the background investigation was a required qualification to become a field deputy
25 with CCSO.

26 Sheriff Harum decided that Plaintiff did not pass her background
27 investigation, and she was therefore not “eligible” under § 41.14.260 for transfer.
28 Although Plaintiff has raised questions and concerns as to the validity of his

1 decision and of the background investigation itself, the Court has found that the
2 background investigation is legitimate and that a reasonable person reading the
3 background investigation report and its addendum could conclude that Plaintiff
4 failed. The Court declines to consider evidence not before Sheriff Harum at the
5 time he made his decision, for it is not this Court's duty to review what would
6 properly be before the Civil Service Commission.

7 It is also not within this Court's jurisdiction to conduct such a review. The
8 Washington Supreme Court has explained that the "doctrine of exhaustion of
9 administrative remedies is well-established in Washington. The rule provides that
10 '[i]n general an agency action cannot be challenged on review until all rights of
11 administrative appeal have been exhausted.'" *S. Hollywood Hills Citizens Ass'n
12 for Preservation of Neighborhood Safety & Env't v. King County*, 101 Wash.2d 68,
13 73 (1984) (internal citation omitted). The principle behind the exhaustion
14 requirement, "the belief that the judiciary should give proper deference to that
15 body possessing expertise in areas outside the conventional experience of
16 judges[.]" is well-illustrated here. *Id.* None of the exceptions to the exhaustion
17 requirement apply to Plaintiff's statutory claim. *See id.* at 74 (listing three
18 exceptions to exhaustion in circumstances when (1) resort to administrative
19 procedures would be futile; (2) the party is challenging the constitutionality of the
20 agency's action or the agency itself; and (3) the aggrieved party has no notice of
21 the initial administrative decision or no opportunity to exercise the administrative
22 review procedures).

23 Because Plaintiff did not pass her background investigation, she was not
24 eligible for transfer under RCW § 41.14.260. Therefore, Defendants did not
25 violate the Washington statutes governing the transfer of employees when a city
26 contracts with the county for the provision of law enforcement services, RCW §§
27 41.14.250-41.14.270.

28 **B. Defamation Claim**

1 Plaintiff claims Defendants defamed her in their statements published in the
2 *Wenatchee World*. To establish a *prima facie* case of defamation, Plaintiff must
3 establish four elements: falsity, an unprivileged communication, fault, and
4 damages. *Herron v. KING Broadcasting Co.*, 109 Wash.2d 514, 521-22 (1987).
5 Falsity in a classic defamation case is a false statement, but it may also be
6 established where the defendant juxtaposes a series of facts or omits certain facts
7 so as to imply a defamatory connection or implication. *Mohr*, 153 Wash.2d at 823.
8 This latter method of establishing falsity is known as “defamation by implication.”
9 *Id.* The claimant must show that the statement is “provably false, either in a false
10 statement or because it leaves a false impression.” *Id.* at 825. On the same note, a
11 defamation defendant need not “prove the literal truth of every claimed
12 defamatory statement.” *Id.* (quoting *Mark v. Seattle Times*, 96 Wash.2d 473, 494
13 (1981)). Instead, “[a] defendant need only show that the statement is substantially
14 true or that the gist of the story, the portion that carries the sting, is true.” *Id.*
15 (quoting *Mark*, 96 Wash.2d at 494).

16 Here, Plaintiff claims the article in the *Wenatchee World* contains
17 defamatory statements. The statements at issue are as follows: “Two other Chelan
18 police officers failed background checks required for employment, said sheriff’s
19 office Sgt. Kent Sisson Sisson would not say why the two officers, Kyle
20 Watson and Bonnie Stearns, were not hired, other than to say that they did not
21 meet standards set by the sheriff’s office.” The statements attributed to Defendant
22 Sisson in this excerpt are true, and their “sting” is also true. Plaintiff did not pass
23 the background investigation, and this meant she did not meet the standards set by
24 the sheriff’s office. Therefore, Plaintiff cannot establish the first element of the
25 *prima facie* case for defamation by a preponderance of the evidence.

26 C. Discrimination on the Basis of Gender

27 Plaintiff’s final claim is that Defendants discriminated against her on the
28 basis of her gender in their decision not to hire her as a CCSO field deputy, in

1 violation of RCW § 49.60.180. Under Washington law, an employer cannot
2 “discharge or bar any person from employment because of . . . sex[.]” RCW §
3 49.60.180(2). To recover, Plaintiff has the burden of proving by a preponderance
4 of the evidence that her gender was a substantial factor in Defendants’ decision not
5 to hire her. *Mackay v. Acorn Custom Cabinetry, Inc.*, 127 Wash.2d 302, 309-10
6 (1995). Plaintiff does not have to prove that her gender was the only factor or the
7 main factor in the decision, or that Ms. Stearns-Groseclose would have been hired
8 but for her gender. *Id.*

9 The testimony and evidence presented by Plaintiff is not enough to meet her
10 burden of showing that it was more likely than not that gender was a substantial
11 factor in Defendants’ decision not to hire her. Plaintiff has presented some
12 circumstantial evidence that gender could have been a factor in Sheriff Harum’s
13 decision. This evidence is comprised mostly of the circumstances surrounding
14 Sheriff Harum’s decisions not to hire three female applicants for field deputy
15 positions in the past. Testimony from Eric Collier, Joe Herron, and Kim Roberts
16 indicated that there very well could be a reluctance to hire women as field deputies.
17 This is troubling to the Court. However, these witnesses also admitted that the
18 other female applicants, similar to Ms. Stearns-Groseclose, had substantial
19 characteristics or factors that constituted legitimate reasons to decline an offer of
20 employment. Additionally, Sheriff Harum testified and other evidence supports
21 the contention that the vast majority of applicants to become a CCSO field deputy
22 are men, which could explain why Sheriff Harum has not hired any female field
23 deputies during his tenure as sheriff.

24 Also troubling to the Court are Mr. Mann’s alleged statements that Plaintiff
25 would not be hired at CCSO before her background investigation was completed.
26 However, assuming Mr. Mann made his comments about Plaintiff failing the
27 background investigation, and even assuming these statements were endorsed by
28 Sheriff Harum, the statements do not necessarily imply gender discrimination. The

1 Court more easily could infer from these statements that Mr. Mann and possibly
2 Sheriff Harum had heard about Plaintiff's work relationships, poor judgment,
3 public intoxication, and/or her other issues from other sources, particularly
4 considering the small size of the community in which they all worked.

5 If Plaintiff's background investigation report were not so strongly negative,
6 the Court might infer that gender was a substantial factor in the decision not to hire
7 her. However, considering the nature of Plaintiff's background investigation
8 report, Plaintiff has not shown by a preponderance of the evidence that gender was
9 a substantial factor in Defendant's decision not to hire her. Based on the evidence
10 presented at trial, the Court finds that it is more likely than not that a
11 discriminatory motive was not a substantial factor in Defendants' decision not to
12 hire Plaintiff as a field deputy. Evidence presented instead supports a finding that
13 Plaintiff's background investigation report was the legitimate and major motivating
14 factor behind Sheriff Harum's decision.

15 CONCLUSION

16 Losing a job one loves is always difficult, particularly when one feels as
17 though the reasons for the loss may preclude finding another job in the same field.
18 This situation is often the case in law enforcement, where extensive background
19 investigations and inquiries into reasons behind leaving one's former position are
20 justifiably routine. Nevertheless, a preponderance of the evidence does not support
21 any of Plaintiff's claims. Plaintiff has failed to show that Defendants violated
22 either her right to due process, the Washington statutes governing transfer of city
23 law enforcement employees to county sheriff's offices, or the Washington Law
24 Against Discrimination. Nor has she proved that Defendants defamed her
25 reputation.

26 As an applicant for a position with CCSO, Plaintiff received constitutionally
27 sufficient notice and an opportunity for hearing after Sheriff Harum decided she
28 failed her background investigation. Furthermore, Washington law requires more

1 than the evidence presented to sustain a claim of discrimination, defamation, or of
2 violation of RCW §§ 41.14.250-41.14.270.

3 Accordingly, and for the foregoing reasons, **IT IS HEREBY ORDERED:**

4 1. Plaintiff's claims are **DISMISSED** and judgment is granted in favor of
5 Defendant.

6 2. The District Court Executive shall enter judgment in favor of the
7 Defendant.

8 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
9 Order, forward copies to counsel, and **close the file.**

10 **DATED** this 6th day of March, 2006.

11
12 s/ Robert H. Whaley

13 ROBERT H. WHALEY
14 Chief United States District Judge
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Q:\CIVIL\2004\Stearns-Groseclose\ffcl.wpd